

The Eurozone Crisis Is Also a Governance Crisis – Isn't It?

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by [Kenneth Anderson](#)

Over the last few months, as the eurozone crisis has gathered steam, I have wondered what the crisis means for the governance structures of the EU. One answer is, not much — the political leadership will somehow muddle through as it always does, on the basis of discretionary deals among the national leaders of European states. Then the institutional arrangements will be adjusted after the fact to reflect whatever happened in the politics of the event.

In that case law, in the sense of legally binding governance arrangements, is epiphenomenal on political contingency which, in this case, is contingent upon relations with the financial markets, which is to say, upon the willingness of lenders to continue to lend and roll over debt. Even something as apparently legally binding as the ECB's charter turns out not to be legally binding on any ordinary reading of it. On this account there's not a lot to say from the standpoint of governance theory or institutional governance arrangements because the EU's lawyers will not know how to (re-)arrange the legal furniture until afterwards. The role for the governance lawyers is the lawyer-as-scribe; the legal rules are post-hoc and revisable according to the contingencies of politics.



This does not seem to me a plausible way of looking at the role of legal rules; if it were, it seems unlikely to me that European states would have been lent this amount of money by investors globally. Why not? Because investors don't like to lend into discretionary legal regimes, for obvious reasons. But leave that aside. I have raised these points before, and have been nonplussed by how little commentary there is by European public lawyers on the question of institutional design, exit from the Eurozone, etc. This, even as it appears from various leaked documents that various important national and EU agencies are indeed privately trying to plan for various contingencies. Presumably they do so as legal experts inside governments and Brussels bureaucracy who must devise new structures of rules, institutions, and law and, just as crucially, a way from here to there (if that is what happens) – and a way that best preserves institutional legitimacy and minimizes what might be catastrophic economic disruption if institutions break down and fail.

If there is regular commentary by the academics and intellectuals in the EU, I would be grateful to hear about it and find out where to read it. I read Peter Lindseth closely, and David Bosco at Multilateralist is always good, but I cannot find a lot of constitutional design voices in Europe weighing into this. I would have thought that the same community of academics that produce much scholarship on constitutionalism in the EU would tell us what the legal and institutional options are. Martin Holtermann, commenting here on my earlier posts, has done as good a job in a few paragraphs as I've read, giving an account of how the discretionary summitry is all okay within governance structures of the EU. But I would like to read more and in much more depth; if you can tell me where it is, I would be grateful. I am not an EU lawyer or theorist of the EU; I don't pretend to know all of this stuff myself.

What worries me is that when I pose this question to some very smart EU scholars I know, there is a shrug as if to say, this isn't about the stuff of political governance or "real" constitutionalism at all — this is just about money and the institutions that manage money. Whether Greece is in or out of the euro is not all that important; the euro is not all that important, it's just a currency. The real EU is not about money, it's about values. The law that matters to EU constitutional theory is not about the ECB, but instead the European Court of Human Rights. No matter what happens to credit ratings, the Eurozone banking system, Greece or even Italy in the sense of in or out of the eurozone, the ECJ and ECtHR will continue to issue rulings on rights and values issues, and those are what actually matter. One can have a sanguine attitude toward the economic aspects — and indeed not have

any understanding of them — and still regard governance of the EU as same as it ever was, because the things that make the EU the EU are its ideals and values, not mere money.

I caricature my friends, no doubt. But caricature or not, this strikes me as dubious at best. As we (residual) marxists like to say, money is never “mere.” Of course money, banking, credit, etc., are at the heart of the governance project, because they structure the material — and, come to it, the moral and spiritual — conditions of the rest of it. Are these conditions really unrelated to the legitimacy, weight, impact and force of such institutions as the ECtHR? Now, I do understand a reluctance to opine, particularly in an academic, as distinguished from immediate policy, way on events that are unfolding now and are quite uncertain at this moment. Fair enough. But I don’t even see much policy discussion of what all this stuff is supposed to mean in terms of legal governance, at least in the places I would normally consult.

One is tempted to conclude, at this point, that the *political theory* of the EU today is being written by financiers and financial analysts in their credit reports. They are anxious, after all, only *secondarily* about markets. They are *primarily* anxious about governance and structures of governance — because the markets are trying to figure out whether the institutions of the EU and its members are serious about their legal and political commitments, and in what ways and to what extent. The state of the markets depends upon the state of these several institutions. And the state of the institutions — given that the legal rules and their application is apparently deeply in flux, unless one simply assumes that the rule of law is whatever discretionary action European leaders decide upon this week — is a matter of conjuring forward the political theory of these institutions.

So they, the financiers, are conjecturing the possible governance futures of the eurozone and the EU. They are market analysts reluctantly turned political theorists because it is political theory that suggests one path or another for the application of legal regimes that appear to be much less determinate than once thought. For George Soros, the move from one to the other is natural and logical; for most credit analysts and hedge fund managers, this is a strange turn indeed. If you have places to point me for analysis of the governance issues, I would be grateful to find out.

Crossposted from [Opinio Juris](#) (the comments there are very worth reading!)

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